

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CIVIL APPLN.(CONTEMPT PETITION) No 223 of 1994

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SIRISH RASIKLAL DESAI

Versus

PRESIDENT,MALINIBEN RATHVA.

Appearance:

MR AD OZA for Petitioners
MR MH RATHOD for Respondent No. 1
MR VH DESAI for Respondent No. 2, 3

CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE R.BALIA.

Date of decision: 14/10/97

ORAL JUDGEMENT

1. Heard the learned counsel for the applicants.
This application has been filed by five persons out of

six applicants who were before the Gujarat Secondary Education Tribunal at Ahmedabad in Application No.604/92. The present application has been filed for alleged non-compliance of the award dated 2nd February 1993, by which the applicants were declared to be surplus employees with effect from 1.2.1993. As a result of the said award they became entitled to the protection as surplus employees from 1.2.1993 and became entitled to payment of salaries by the department concerned until they are absorbed in some other school. Vide the said award the management of the Utter Buniyadi Adivasi Madhyamik Shala, Bhindol was directed to make payment of arrears of salary from July 1992 to 31st January 1993. It was left to the Board to consider and declare the applicants as surplus from some date earlier than 1.2.1993. However, the order did not contain any specific direction to absorb the applicants within any specified period. It was left to be decided by the Department according to procedural guidelines.

2. The grievance of the applicants in the present application is not uniform in each case. According to the averments made in the application, the applicant nos.1, 4 and 5 have been absorbed in some other schools and therefore they have no grievance about non-absorption. However, their grievance is about the recovery of salaries from the department and non-payment of arrears for the period between July 1992 and January 1993. As far as the applicant nos.2 and 3 are concerned, their grievance is that they have not been absorbed in some other school and they are not being paid their salary from July 1992.

3. So far as the payment of arrears from July 1992 to 31st January 1993 is concerned, it is for arrears falling due prior to the date of award, which could be calculated as per the terms and conditions of the employment, but the same became due along with award, and does not give rise to any continuing cause of action. There is no direction to absorb any of the applicants within a particular time and it was left to the DEO to absorb the surplus applicants as per their governing rules and procedure. In the aforesaid circumstances, so far as any grievance about the payment of arrears prior to February 1993 is concerned, the contempt proceedings could be initiated within one year from the date of the award. It is also well settled legal position that contempt proceedings can be initiated by the court, and mere filing of the application before the court does not amount to initiation of proceedings. In the present case the award is dated 2nd February 1993. The present

application has been filed on 2nd February 1994 but no notice has been issued by the Court until 8th February 1994, that is, contempt proceedings were not initiated until the expiry of one year from the date of award.

4. In these circumstances, without going into the question whether non-compliance of the award of the Gujarat Secondary Education Tribunal could be made subject matter of the contempt proceedings, the application must fail in view of the provisions of section 20 of the Contempt of Courts Act.

5. So far as the absorption as surplus employees in some other school by the department and payment of salaries becoming due after the date of the award is concerned, there being no specific direction, but obligation arising out of a declaration made by the Tribunal, in our opinion, any delay in absorption as surplus employee in some other school or non-payment of salaries in future may furnish the applicants a fresh cause of action for agitating and seeking remedy in respect thereof. But initiation of contempt proceedings would not be ordinarily warranted. In this view of the matter we do not find any reason to proceed further with the matter, so far as the implementation of the award dated 2nd February 1993 is concerned.

6. Incidentally the applicants have also averred in their application that two of the applicants viz. Harivadan and Ishwarbhai have not been paid a sum of Rs.15000/directed to be paid by a Division Bench of this court in MCA No.886/88 vide its order dated 16th September 1991. The said order also being more than two and half years old, initiation of contempt jurisdiction is barred being beyond the time limit prescribed under section 20 of the Contempt of courts Act.

6. In the aforesaid circumstances this petition must fail. Rule is discharged with no order as to costs. However, this is without prejudice to the rights of the applicants to avail of other remedies as are available to them under law for recovery of any sum due to them under the aforesaid orders or enforcements of rights accruing to any of the applicants, arising from their being declared surplus. We may also make it clear that discharge of rule against the respondents does not in any way absolve the department concerned from its liability to make the payment of regular salaries from 31st January 1993 until the person concerned is absorbed in another school and started getting payment therefrom nor is it absolved from taking steps to absorb the applicants in

some other school within a reasonable time. It is expected that if either of these obligations has not been discharged till this date, they shall now be discharged within a period of three months from today. Likewise, school management is not absolved from discharging its obligation to pay arrears as directed by the Tribunal.
